

VIRGINIA

IN THE FAIRFAX COUNTY CIRCUIT COURT

FILED  
CIVIL DIVISION

2012 OCT 31 PM 2:44

DIETZ DEVELOPMENT, LLC,

and

CHRISTOPHER DIETZ

*Plaintiffs*

v.

Case No. 2012 - 16249

JANE PEREZ,

Serve: Jane Perez

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF  
MOTION FOR A PRELIMINARY INJUNCTION**

Come now your Plaintiffs, Dietz Development, LLC and Christopher Dietz, by counsel, and provides the following memorandum in support of Plaintiff's Motion for a Preliminary Injunction.

**STANDARD OF REVIEW**

The standard for granting a motion for a preliminary injunction has not been clearly delineated by the Supreme Court of Virginia. In its stead, Circuit Courts have adopted a traditional four pronged equitable analysis, when determining if a preliminary injunction should be granted. In considering a motion for a temporary injunction, this Court must determine whether there is irreparable harm and lack of an adequate remedy at law. *Hotjobs.com, Ltd. v. Digital City, Inc.*, 53 Va. Cir. 36, 39 (Fairfax 2000) (Ney, J.). This Court should look to (1) the likelihood of irreparable harm to Plaintiff if the injunction is denied, (2) the likelihood of irreparable harm to the Defendant if the

injunction is granted, (3) the likelihood that the Plaintiff will succeed on the merits, and (4) the public interest.<sup>1</sup>

### FACTS

1. Dietz Development, LLC is a construction firm working in the greater Washington area.
2. Christopher Dietz is the president of Dietz Development, LLC and the person Ms. Perez would associate most closely as the representative of the company.
3. Dietz Development, LLC entered into an agreement with Ms. Perez to perform certain cosmetic repairs to a home she had recently acquired.
4. Dietz Development performed the work in a workmanlike manner during the time it was permitted on her property.
5. Ms. Perez never paid any money for the work performed.
6. Ms. Perez demanded that Dietz perform additional work for free, and became upset when Dietz refused. As a result, Ms. Perez locked Dietz out of the job site.
7. Ms. Perez made statements of fact, set out in detail in the Complaint in this matter, that Dietz (without distinguishing between Christopher Dietz and the LLC) had not fulfilled the contract, had damaged her house, had been untruthful in billing, and had committed a crime in stealing jewelry from Ms. Perez.
8. These statements were made over an extended period of time and show no sign of abating.

Day & Johns, PLLC  
10560 Main Street  
Suite 218  
Fairfax, Virginia 22030  
Phone: (703) 268-5600  
Fax: (703) 268-5602

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<sup>1</sup> *Am-Cor.Com, Inc. v. Stevens*, 56 Va. Cir. 245, 250 (Warren 2001) (Wetsel, J.); *Christian Defense Fund v. Stephen Winchell & Assocs., Inc.*, 47 Va. Cir. 148, 149 (Fairfax 1998) (Thacher, J.) (citing *Seniors Coalition, Inc. v. Seniors Foundation*, 39 Va. Cir. 344 (Fairfax 1996) (Roush, J.)); *See, Wahrhaftig v. Artman*, 73 Va. Cir. 37, 38 (Loudoun 2007) (Horne, J.).

9. These statements are untrue and are harming Dietz Development and Christopher Dietz so long as they remain public.

10. Ms. Perez has shown that she intends to continue making such statements and will continue to create new harm to Dietz Development and Christopher Dietz.

**A preliminary injunction should be granted as the Plaintiffs are likely to succeed on the merits.**

Plaintiffs' likelihood of success in this matter is great as the statements made by Ms. Perez are defamatory per se. *See Tronfeld v. Nationwide Mut. Ins. Co.*, 272 Va. 709, 713 (2006). In addition, Plaintiffs have at least one witness to the loss of business as a direct result of Ms. Perez's statements.

**A preliminary injunction should be granted as the likelihood of irreparable harm to Plaintiffs is great if the injunction is denied**

The likelihood of irreparable harm to Plaintiffs is great if a preliminary injunction is not granted, as Ms. Perez will continue to make defamatory statements, as shown by her history of making such statements.

Damages are unsuitable to remedy Plaintiffs situation for the following reasons:

1. The statements are online on reputable business review sites and Plaintiffs do not have another means of seeking the removal of such statements, representing an ongoing harm to Plaintiffs.
2. The business losses Plaintiffs know about are likely only a portion of the total losses where the statements are online and Plaintiffs do not have the ability to direct marketing at those who see the information.
3. Any statements made will continue to exist online and be not only searchable but also constitute the online image of Plaintiffs.

4. Plaintiffs' business is dependent on referrals and visibility of its market share.

These assets are a dynamic resource whose value is not easily determined, and which would not need to be speculated on in assessing damages.

**A preliminary injunction should be granted as the likelihood of irreparable harm to Defendant is minimal if the injunction is granted**

The likelihood of irreparable harm to Ms. Perez is minimal as the injunction would simply restrain her from making speech which wrongfully tarnishes Plaintiffs' reputation. While this would to a small extent reduce her freedom of expression until there is a final hearing, she has no financial interest in this speech, and she would not be prevented from pursuing any work opportunity or ongoing business concern. Until the matter is more fully litigated, the injunction would represent the least intrusive means of minimizing Plaintiffs' damages.

**The public interest, to the extent relevant, favors Plaintiffs**

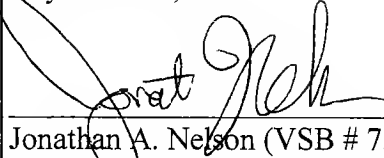
The public interest is met in the preservation of truthful communications and presentation of accurate information in making consumer choices.

WHEREFORE, as preliminary relief, Plaintiffs ask this Court to enter an order enjoining Jane Perez from until entry of a final order regarding such injunction, and such other relief as this Court deems proper, pending the outcome of this case.

Day & Johns, PLLC  
10560 Main Street  
Suite 218  
Fairfax, Virginia 22030  
Phone: (703) 268-5600  
Fax: (703) 268-5602

Respectfully Submitted,  
DIETZ DEVELOPMENT, LLC  
CHRISTOPHER DIETZ  
By counsel

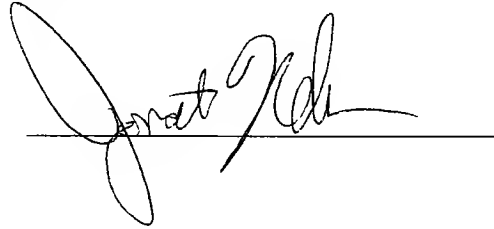
Day & Johns, PLLC:



Jonathan A. Nelson (VSB # 75247)  
10560 Main Street, Suite 218  
Fairfax, Virginia 22030  
Phone: (703) 268-5600  
Fax: (703) 268-5602  
*Attorney for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of this Memorandum in Support of Motion for Preliminary Injunction has been sent on this 31st day of October, 2012 for service by private process server on Defendant at the address set forth in the caption of this matter.



Day & Johns, PLLC  
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Suite 218  
Fairfax, Virginia 22030  
Phone: (703) 268-5600  
Fax: (703) 268-5602